

STATE OF MAINE

DIRIGO HEALTH AGENCY

RE: DETERMINATION OF ) MAINE ASSOCIATION OF  
AGGREGATE MEASURABLE COST ) HEALTH PLANS' MEMORANDUM IN  
SAVINGS FOR THE FOURTH ) OPPOSITION TO DHA'S MOTION FOR  
ASSESSMENT YEAR (2009) ) ORDER REQUIRING MORE SPECIFIC  
 ) DISCLOSURE OF TESTIMONY

**FILING COVER SHEET**

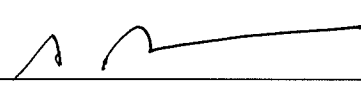
**TO:** Board of Directors  
DIRIGO HEALTH AGENCY  
Attn: Ruth.A.Burke@maine.gov  
53 State House Station  
Augusta, ME 04333-0053

**DATE FILED:** June 30, 2008

**PARTY:** Maine Association of Health Plans

**DOCUMENT:** Memorandum in Opposition to Motion

**CONFIDENTIALITY:** None

  
\_\_\_\_\_  
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	)	DISCLOSURE OF TESTIMONY

Intervenor Maine Association of Health Plans ("MEAHP") submits this memorandum in opposition to the Dirigo Health Agency's ("DHA") motion for an order requiring that the intervenors' disclosure of their experts' testimony meets the requirements of Rule 26(b) of the Maine Rules of Civil Procedure, and states as follows:

1. With respect to the expert testimony of MEAHP's expert, Jack Burke, DHA's suggested supplemental disclosure is duplicative. DHA shall receive the MEAHP pre-filed testimony and exhibits on July 9, 2008 in accordance with the Hearing Officer's Procedural Order on Intervention and Procedures dated May 20, 2008 ("the May 20<sup>th</sup> Order") and Procedural Order on Distribution of Materials dated June 24, 2008. The MEAHP pre-filed testimony will include, without limitation, Jack Burke's report. This filing will be made on July 9, 2008, the date by which DHA's motion seeks to require MEAHP to complete the Rule 26(b) disclosure.

2. Under Rule 26(b)(4)(A)(i) of the Maine Rules of Civil Procedure, a party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial:

to state the subject matter on which the expert is expected to testify,

to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and

to identify the data or other information considered by the witness in forming the opinions,

any exhibits to be used as a summary of or support for the opinions,

the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years, and

the compensation to be paid for the study and testimony...

Despite DHA's counsel's assertion to the contrary, in fact in the Third Year AMCS proceeding, none of the parties including DHA provided expert disclosures to the level of detail requested by DHA in its motion. DHA did not file Rule 26(b) disclosures this year for either of its experts. DHA's suggestion that the intervenors make a full Rule 26(b) disclosure of their experts' testimony and related matters is burdensome given the amount of material produced by DHA<sup>1</sup> and the abbreviated timeframes involved in this proceeding, especially in light of MEAHP's full pre-filed testimony being due on the same day as requested by DHA in its motion and DHA not having made a similar Rule 26(b) disclosure itself.

3. MEAHP's disclosure of its expert witness filed in this proceeding contains the same level of detail as its disclosure filed in the Third Assessment Year. In that prior proceeding, DHA did not object to MEAHP's disclosure. The intervenors, unlike DHA and its experts, do not have the luxury of time in this proceeding. On June 2, 2008, DHA disclosed its new methodology which differs greatly from its methodology utilized in the prior three assessment years. Documents produced by DHA suggest that DHA and its experts have been working on the year four AMCS methodologies and calculations for at least three months prior to DHA's June 2 initial disclosure. It has been an enormously time-consuming endeavor on the part of the intervenors and their experts to sort through DHA's production of materials and to understand the theories, assumptions, calculations, and analyses employed by DHA, its experts, and its experts' subcontractors in reaching the conclusions stated and opinions offered in the new methodology. To require the intervenors to prepare expert disclosures at this stage in the proceeding in the manner required by Rule 26 while also preparing full-blown expert testimony and exhibits would prejudice MEAHP. Further, such a requirement would be a distraction which would require substantial effort, time, and resources to meet; time and resources that the abbreviated time schedule in this proceeding does not allow the intervenors.

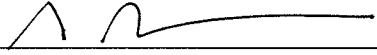
4. There is no prior procedural order requiring the parties to complete their expert disclosures in a manner pursuant to Rule 26(b)(4)(A)(i) of the Maine Rules of Civil Procedure.

WHEREFORE, MEAHP respectfully requests the Hearing Officer deny DHA's Motion requiring the intervenors to file and serve expert disclosures to the level of detail as required by Rule 26(b)(4)(A)(i) of the Maine Rules of Civil Procedure.

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<sup>1</sup> In accordance with the May 20<sup>th</sup> Order, DHA timely produced on June 2, 2008, a voluminous body of supporting documentation contained on a compact disk. However, after its mandated disclosure under the May 20<sup>th</sup> Order, DHA, on June 3 and June 9, 2008, without seeking an extension of time or leave to do so, produced two additional compact disks of supporting calculations and spreadsheets. On June 7, 2008, DHA produced additional zip files via email containing an enormous number of pages of spreadsheets and other documents. On June 25, 2008, DHA supplied additional information on the various assumptions and calculations necessary for the experts to be able to understand the complex underlying assumptions, calculations, steps and variables employed in the DHA methodology. The intervenors received DHA's pre-filed testimony at 3:00 PM on June 26, 2008.

Dated: June 30, 2008



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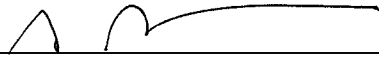
## CERTIFICATE OF SERVICE

I certify that on June 30, 2008, pursuant to the paragraph 3(a) of the May 20<sup>th</sup> Order, I caused to be filed electronically the foregoing document by emailing a true copy to:

Board of Directors, Dirigo Health Agency at Ruth.A.Burke@maine.gov

I further certify that on June 30, 2008, pursuant to paragraph 3(b) of the May 20<sup>th</sup> Order, I caused to be served by sending an identical electronic copy of the foregoing document to:

Consumers for Affordable Health Care	Mia S. Poliquin Pross, Esq. <a href="mailto:mpross@mainecahc.org">mpross@mainecahc.org</a>
Maine Automobile Dealers Association Insurance Trust	Bruce Gerrity, Esq. <a href="mailto:bgerrity@preti.com">bgerrity@preti.com</a>
Anthem Health Plans of Maine, Inc. d/b/a Anthem Blue Cross and Blue Shield	Christopher T. Roach, Esq. <a href="mailto:croach@pierceatwood.com">croach@pierceatwood.com</a>
Dirigo Health Agency	Michael J. Colleran, Asst. A.G. <a href="mailto:michael.colleran@maine.gov">michael.colleran@maine.gov</a>
Hearing Officer	William Laubenstein, Esq. <a href="mailto:william.laubenstein@maine.gov">william.laubenstein@maine.gov</a>
Maine State Chamber of Commerce	William H. Stiles, Esq. <a href="mailto:wstiles@verrilldana.com">wstiles@verrilldana.com</a>



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